

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE: NEW ENGLAND COMPOUNDING
PHARMACY, INC. PRODUCTS LIABILITY
LITIGATION

MDL No. 2419
Master Dkt.: 1:13-md-02419-FDS

THIS DOCUMENT RELATES TO:

All Actions

**OBJECTIONS TO SUBPOENA TO PRODUCE DOCUMENTS IN A CIVIL ACTION
AND NOTICE OF DEPOSITION AND MOTIONS TO QUASH**

On June 21, 2013, Counsel for Plaintiff Steering Committee (PSC) directed to Surgery Center of Wilson, LLC a copy of a subpoena to produce documents in MDL 2419, *In re New England Compounding Pharmacy, Inc. Products Liability Litigation* and a Notice of Videotaped Oral Deposition for July 15, 2013 (attached as “Exhibit A”). Surgery Center of Wilson, LLC is a medical practice located in Wilson, North Carolina, and is not a party to the above-referenced litigation. Surgery Center of Wilson, LLC objects to the subpoena and notice of deposition as follows:

1. PSC failed to tender the fees for 1 day attendance allowed by law, in violation of Federal Rule of Civil Procedure 45(b)(1).
2. The subpoena and notice of deposition are overly broad, unduly burdensome, and contemplate the production of privileged information in violation of Federal Rules of Civil Procedure 26(b) and 45(c)(3).
3. The subpoena fails to allow reasonable time to comply in violation of Federal Rule of Civil Procedure 45(c)(3).

4. The subpoena and notice of deposition exceed the scope of limited discovery approved by the Court. Specifically, the Court's Order granting Plaintiffs' Leave to Service Subpoenas (Doc. 192) limited the allowable discovery to:

[T]he names of patients that have been identified as receiving NECC solutions, medications or compounds from January, 2011 – November, 2012, the patients' last known address, the records identifying that NECC was the supplier of the solution, medication or compound, including lot number, the hospital or healthcare facilities' NECC product purchase records, including order forms, prescriptions, billing and accounts receivable, the hospital or healthcare facilities' NECC product storage and patient distribution records, and any other information that lead counsel and the PSC reasonably determine necessary to the prosecution and resolution of these actions.

5. The subpoena seeks documents outside the possession, custody and/or control of Surgery Center of Wilson, LLC.
6. In the interests of eliminating cumulative and duplicative pleadings, and because identical subpoenas were issued to this Respondent and to Respondent Surgery Center Associates of High Point, LLC, the undersigned Respondent also makes reference to the arguments more fully explained and set forth in Section II (A)-(E) of the *Objection and Motion to Quash of Surgery Center Associates of High Point, LLC to Plaintiffs' Subpoena to Testify and to Produce Documents* (Doc. 250), filed with this Court on July 8, 2013. Those arguments are hereby incorporated by reference and adopted by this Respondent as if fully set forth herein.

For these reasons, Respondent Surgery Center of Wilson, LLC objects and moves to quash the subpoena issued to it by Plaintiffs.

DATED this 10th day of July, 2013.

/s/ C. Houston Foppiano

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CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing Objections to Subpoena to Produce Documents in a Civil Action and Notice of Deposition and Motions to Quash to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to those parties by operation of the court's electronic filing system.

Dated: July 10, 2013

/s/ C. Houston Foppiano
C. Houston Foppiano
Attorney for Surgery Center of Wilson, LLC